

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.07.2017

CORAM

THE HON'BLE MR. JUSTICE D. KRISHNAKUMAR

WP.No.18451 of 2014 and
MP.Nos.1 & 2 of 2014

Secretary,
Mannai Narayanasamy Town Cooperative
House Building Society Ltd., T.1110,
No.0/A, Balakrishna Nagar,
Mannargudi (Po) & (Tk),
Pin: 614 001,
Tiruvarur
District

..Petitioner

Vs.

1. Principal District and Sessions Court /
Cooperative Tribunal,
Tiruvarur (Po) & (Dt)
2. Regional Deputy Registrar of
Cooperative Housing Societies,
Daniel Thomas Nagar,
Ramalinga Adigalar Educational
Trust Building,
Near Old Housing Board Colony,
Thanjavur (Po) & (Dt).
3. K.Srinivasan
4. S.Seetha
5. S.Krishnasamy
6. S.Sampath
7. S.Seshadri

..Respondents

PRAYER:

The Writ Petition is filed under Article 226 of the Constitution of India to issue a writ of certiorari calling for the records of the First Respondent Tribunal relating to the order and decree dated 10.01.2014 in Coop CMA.No.5 of 2011 and I.A.No.14/2012, 15/2012 and 5/2013 and quash the same.

For Petitioner : Mr.P.Anbarasan
For Respondents : Mr.V.Selvaraj, Additional
Government Pleader for R1 & R2

: Mr.V.Venkataseshan for R3 to R7

ORDER:

By consent of both the parties, the writ petition is taken up for final disposal today itself.

2. The learned counsel for the petitioner would submit that the petitioner is the Secretary of the above Mannai Narayanasamy Town Cooperative House Building Society Ltd. The third and fourth respondents availed a loan for a sum of Rs.3,00,000/- for construction of a house, mortgaging their property. The loan was repayable in 180 monthly instalments. The third respondent committed defaults in the payment of the instalments of the loan and became liable for the levy of penal interest of 3% for the overdue amount. In view of the defaults, the society foreclosed the entire loan and filed an arbitration claim in ARC.156/2002-03. before the second respondent on 12.06.2002 claiming Rs.3,94,706/-. Even after the same, the third respondent did not respond to repay the loan, and the Cooperative Sub Registrar, Tiruvarur conducted an arbitration proceedings and passed an award dated 31.08.2004. Even after the arbitration proceeding, the third respondent did not show any interest to pay the award amount. Hence, the society filed execution petition before the second respondent in EP.No.195/04-05 and the second respondent issued a demand notice dated 29.12.2004. Even thereafter, no response from the third respondent, the second respondent issued a sale notice. After receiving the sale notice, the sixth respondent filed a writ petition challenging the same.

3. This court by order dated 03.08.2010 disposed of the writ petition by permitting the sixth respondent to pay the dues within a period of five months from the date of receipt of a copy of this Order. The third respondent neither challenged the said order nor complied with the order. Thus, the third respondent has committed a willful default. However, the respondents 3 to 7 have filed an appeal in CMA.No.5 of 2011 before the District and Sessions Judge/ Cooperative Tribunal challenging the award dated 31.08.2004 without even impleading the petitioner society as a party. The said appeal was allowed without properly considering the facts and provisions of law. Hence, the petitioner has filed this writ petition before this Court.

4. The learned counsel for the petitioner contended that the Tribunal has passed an award without giving opportunity to the petitioner's society and hence on this sole ground, the judgment passed by the tribunal is liable to be set aside.

5. Considering the facts and circumstances of the case and the submission made by the counsel for the petitioner, the

order passed by the second respondent in ARC.No.156 of 2002-03 dated 31.08.2004 and the order passed by the Appellate Tribunal in Coop CMA.No.5 of 2011 dated 10.01.2014 are hereby set aside and remanded the appeal to the second respondent to consider afresh and pass orders on merits and in accordance with law after providing an opportunity to the parties concerned.

6. The writ petition is allowed with above directions. Consequently, the connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. Principal District and Sessions Court /
Cooperative Tribunal,
Tiruvavur (Po) & (Dt)
2. Regional Deputy Registrar of
Cooperative Housing Societies,
Daniel Thomas Nagar,
Ramalinga Adigalar Educational
Trust Building,
Near Old Housing Board Colony,
Thanjavur (Po) & (Dt).

+1cc to Mr.P.Anbarasan, Advocate, S.R.No.52875

+2cc to Mr.V.Venkataseshan, Advocate, S.R.No.52654

+1cc to the Government Pleader, S.R.No.53509

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